

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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SIERRA NEVADA FOREST PROTECTION
CAMPAIGN, CENTER FOR BIOLOGICAL
DIVERSITY, NATURAL RESOURCES
DEFENSE COUNCIL, SIERRA CLUB,
and THE WILDERNESS SOCIETY,
non-profit organizations,

No. CIV-S-05-0205 MCE GGH

CIV-S-05-0211 MCE GGH

CIV-S-05-0905 MCE GGH

CIV-S-05-0953 MCE GGH

(Related Cases)

Plaintiffs,

v.

AMENDED ORDER

MARK REY, in his official
capacity as Under Secretary of
Agriculture, DALE BOSWORTH, in
his official capacity as Chief
of the United States Forest
Service, JACK BLACKWELL, in his
official capacity as Regional
Forester, Region 5, United
States Forest Service, and
JAMES M. PEÑA, in his official
capacity as Forest Supervisor,
Plumas National Forest,

Defendants.

and Related Cases.

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These related cases all challenge the sufficiency of the 2004 Sierra Nevada Forest Plan Amendment ("the 2004 Framework"). Plaintiffs allege that in adopting the 2004 Framework, the government violated various of the National Environmental Policy Act, 42 U.S.C. § 4321, et seq. ("NEPA"), the Administrative Procedure Act, 5 U.S.C. §§ 701-706 ("APA"), and the National Forest Management Act, 16 U.S.C. § 1600, et seq. ("NFMA"). Now before the Court are eight different Motions to Intervene brought on behalf of twenty-seven (27) different groups/organizations seeking to assert their own particular interests into this litigation so as to ensure that those interests are heard. Three motions have been filed in Sierra Nevada Forest Protection Campaign v. Rey, et al., Case No. CIV-S-05-0205, on behalf of the following: 1) Quincy Library Group and Plumas County; 2) California Ski Industry Association; and 3) Tuolumne County Alliance for Resources & Environment (TuCare), et al.¹ In People of the State of California ex rel. Bill Lockyer v. United States Department of Agriculture, et al., Case No. CIV-S-05-0211,

¹The other applicants for intervention, in addition to TuCare, are California Forest Counties Schools Coalition, Regional Council of Rural Counties, Western Council of Industrial Workers, Klamath Alliance for Resources & Environment, Coarsegold Resource Conservation District/Eastern Madera County Fire Safe Council, Tulare County Resource Conservation District, Sierra Resource Conservation District, Strawberry Property Owners' Association, Huntington Lake Association, Huntington Lake Big Creek Historical Conservancy, California Equestrian Trails & Lands Coalition, California Forestry Association, California Licensed Foresters Association, California/Nevada Snowmobile Association, American Forest & Paper Association, American Forest Resource Council, and BlueRibbon Coalition.

1 motions have been submitted on behalf of 1) the TuCare group of
2 intervenors; 2) the California Cattlemen's Association; 3) the
3 Quincy Library Group and Plumas County; and 4) the California Ski
4 Industry Association. Finally, in California Forestry Ass'n, et
5 al. v. Dale N. Bosworth, et al., Case No. CIV-S-05-0905, the
6 Sierra Nevada Forest Protection Campaign, Center for Biological
7 Diversity, National Resources Defense Council, Sierra Club, and
8 The Wilderness Society have collectively moved to intervene.²

9 Under Federal Rule of Civil Procedure 24,³ a party may
10 intervene in pending litigation either as a matter of right,
11 under subsection (a), or permissively with the court's consent
12 under subsection (b).

13 An applicant has the right to intervene under Rule 24(a) if
14 1) the intervention request is made in a timely fashion; 2) a
15 "significantly protectable" interest related to the subject
16 matter of the litigation is asserted; 3) disposition of the
17 matter may impair or impede the applicant's interest in the
18 absence of intervention; and 4) if the applicant's interest is
19 not adequately represented by existing parties. Wetlands Action
20 Network v. United States Army Corps of Eng'rs, 222 F.3d 1105,
21 1113-14 (9th Cir. 2000). Private parties may not, however,
22 intervene as a matter of right in an action alleging NEPA
23

24 ²The Court's original June 16, 2005 Order, while granting
25 all pending motions to intervene in these related cases,
26 nonetheless appears not to have fully identified all eight
27 pending motions. That shortcoming has been rectified in this
28 Amended Order as set forth above, which does not change the
substance of the Court's original order.

³All further references to "Rule" or "Rules" are to the
Federal Rules of Civil Procedure.

1 violations on grounds that such parties do not have the requisite
2 significantly protectable interest in NEPA compliance actions.
3 Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1108 (9th Cir.
4 2004). Because the parties seeking to intervene in the cases
5 presently before this Court are largely private parties, and
6 given the fact that many of the claims sought to be asserted do
7 implicate NEPA, intervention as a matter of right appears
8 inappropriate in this instance.

9 Permissive intervention under Rule 24(b), however, "plainly
10 dispenses with any requirement that the intervenor shall have a
11 direct personal or pecuniary interest in the subject of the
12 litigation." SEC v. U.S. Realty & Improvement Co., 310 U.S. 434,
13 459 (1940). Consequently permissive intervention may be allowed
14 here even in the face of allegations sounding under NEPA.

15 An applicant seeking permissive intervention must satisfy
16 three threshold requirements: 1) the motion must be timely; 2)
17 the court must have an independent basis for jurisdiction over
18 the applicant's claims; and 3) the intervenor's interests must
19 share a common question of law or fact with the main action.
20 Donnelly v. Glickman, 159 F.3d 405, 412 (9th Cir. 1998). The
21 district court has broad discretion to grant permissive
22 intervention if these factors are met. See Spangler v. Pasadena
23 City Board of Educ., 552 F.2d 1326, 1329 (9th Cir. 1977).

24 While several parties have filed responses to the
25 intervention requests now before the Court, no one argues that
26 the threshold requirements for permissive intervention have not
27 been satisfied. These cases were only recently filed and there
28 is no dispute that intervention has been sought on a timely

1 basis. Similarly, because the interests advanced by the proposed
2 intervenors all relate to the same 2004 Framework at issue in the
3 main action, and because the same jurisdictional bases apply, the
4 remaining prerequisites (common issues and independent
5 jurisdictional grounds) are also met.

6 In exercising its discretion to allow permissive
7 intervention, the Court finds that the 2004 Framework impacts
8 large and varied interests, including those advanced by the
9 proposed intervenors. The potential magnitude of the 2004
10 Framework is great, and the implications flowing from any
11 challenge to it may be considerable. Ensuring that all competing
12 interests implicated by the Framework are heard, including those
13 advanced by proposed intervenors herein, will contribute to the
14 just and equitable resolution of these cases. Consequently
15 permissive intervention will be allowed, and the motions
16 presently before the Court are granted.⁴

17 In permitting such intervention, however, the Court must
18 still consider "whether the intervention will unduly delay or
19 prejudice the adjudication of the rights of the original
20 parties." Fed. R. Civ. P. 24(b)(2). This inquiry has been the
21 primary focus of the original parties to this litigation in
22 response to these motions. Those parties contend that without
23 briefing limitations, the presence of multiple intervenors in
24 this matter may prove logistically impracticable, both in terms
25 of the parties' response to numerous briefs and the Court's

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27 ⁴Because oral argument would not be of material assistance,
28 this matter was deemed suitable for decision without oral
argument. E.D. Local Rule 78-230(h).

1 burden in considering the voluminous papers that may be filed in
2 response to anticipated motions for summary judgment. In that
3 regard, the court may impose reasonable conditions and
4 restrictions on the participation of intervenors so that their
5 involvement does not derail the efficient conduct of these
6 proceedings. See Stringfellow v. Concerned Neighbors in Action,
7 480 U.S. 370, 380 (1987).

8 The Court will consequently impose limits on the briefing
9 allowed in any summary judgment motion filed in these related
10 cases. Opening points and authorities will be limited to fifty
11 (50) pages in length. Opposition papers are subject to a thirty
12 (30) page limitation, and reply memoranda shall not exceed (10)
13 pages. Any brief filed on behalf of any intervenor, or group of
14 intervenors represented by single counsel, shall not be longer
15 than twenty (20) pages.

16 IT IS SO ORDERED.

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18 DATED: September 28, 2005

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22 MORRISON C. ENGLAND, JR.
23 UNITED STATES DISTRICT JUDGE
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